IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

CRL.A.No. 752 of 2007()

SC.736/2006 of ADDL.SESSIONS COURT-TRIAL OF ABKARI ACT CASES,NEYYATTINKARA

CP.170/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, NEYYATTINKARA

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APPELLANT: ACCUSED

RAJENDRAN,
C.NO.1528, CENTRAL PRISON, TRIVANDRUM.

BY ADV. LIJU M.P[STATE BRIEF]

RESPONDENT: COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
A PUBLIC PROSECUTOR.

BY ADV. PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Thankappan, J.

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Crl. A. No. 752 of 2007

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Dated this the 24th day of August, 2007

JUDMENT

Second accused in S.C.No.736/2006 on the file of the Court of the Addl. Sessions Judge for the Trial of Abkari Act Cases, Neyyattinkara is the appellant. He along with the 1st accused was charge-sheeted for the offence punishable under section 58 of the Abkari Act on the allegation that they were found in possession of 35 litres of spirit carried in a scooter in contravention of the provisions of the Abkari Act. To prove the allegation PW1 to PW6 were examined and Exts.P1 to P8 and MO1 were marked. When the appellant was questioned under section 313 of Cr.P.C., he denied the allegation levelled against him and stated that he was hit by the scooter ridden by the 1st accused. Relying on the evidence adduced by the prosecution, the trial court found the accused guilty of the offences punishable under sections 58 of the the Abkari Act and they were convicted thereunder and sentenced to undergo rigorous imprisonment for four years and also to pay a fine of Rs.1,00,000/- and in default of payment of fine to undergo simple imprisonment for a further period of six months. The

conviction and sentence awarded against the appellant are challenged in this appeal.

2. The appeal is filed through the jail authorities. A member from the State Brief panel has been appointed to defend the case of the appellant.

3. This Court heard learned counsel for the appellant and the learned Public Prosecutor.

4. Learned counsel for the appellant challenges the impugned judgment on the following grounds:- Firstly, it is contended that the trial court ought to have rejected the evidence of PWs.3 to 6 who are official witnesses, as the only independent witness was declared hostile to the prosecution. Secondly, it is contended that PW4 detecting officer had not followed the procedure prescribed under the Act. Thirdly, it is contended that the trial court went wrong in finding the appellant guilty under section 58 of the the Abkari Act.

5. PW4 had given evidence that while himself and other police officials were on patrol duty he noted that scooter bearing No.KL.01-3407 was driven by the 1st accused and the appellant who was sitting at the back side was holding the can. According to him, on seeing the police jeep, the 1st accused fled away from the spot abandoning the scooter and the contraband and the appellant was caught hold from the spot. He also stated

that on examination it was revealed that the can contained 35 litres of spirit and on questioning the appellant told that the spirit was for sale. This witness further stated that on preparation of Ext.P1 mahazar MO1 can with spirit and scooter were seized and the appellant was arrested on the spot. The evidence of this witness has been corroborated with the evidence of PW2 who accompanied PW4. In cross-examination PW2 stated that the appellant was seen about 3 feet away from the scooter whereas the evidence of PW4 was that the appellant was under the scooter. This contradiction is not much relevance, as the evidence of PW1 would show that when they reached at the scooter, the legs of the appellant was under the scooter. The evidence of PWs.2 and 4 is corroborated by the evidence of PW3 Head Constable who accompanied them. Even though PW1 stated that he did not see the incident, he stated that he signed Ext.P1 mahazar and other records prepared by PW4.

6. Regarding the keeping of the residue and the sample, the trial court found that the sample bottle produced before court intact as tamper proof was packed properly in a tamper proof manner and forwarded it to the Examiner, as usual with utmost care and caution in the hands of a Police Constable. Hence, this Court finds that the residue and sample are kept in the proper custody till the date of producing the same before the Court.

7. It has come out in evidence that the patrolling party had occasion to see the appellant holding MO1 can while sitting on the scooter driven by another and the scooter got abruptly stopped from which the appellant fell down together with the can. Hence, the finding of the trial court that the prosecution had categorically established that at the piece of occurrence, the appellant was found in conscious physical possession and control of spirit is correct and it is not liable to be interfered with.

6. The next question to be considered in this appeal is whether the punishment awarded against the appellant is excessive or not? The trial court considered this aspect and found that the appellant was a habitual offender. In the above circumstances, this Court is of the view that the sentence awarded against the appellant requires no interference by this Court. Hence, the appeal stands dismissed confirming the impugned judgment.

K. Thankappan,
Judge.

K. Thankappan,J.

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Crl.A. No.752/2007

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Judgment
24-8-2007